

AMENDMENT & RESPONSE UNDER 37 C.F.R. § 1.116 - EXPEDITED PROCEDURE

Serial Number: 09/941,164

Filing Date: August 28, 2001

Title: ANTIPERSPIRANT DEODORANT EMULSION

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Dkt: 967.060US1

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19. (New) The stable antiperspirant deodorant roll-on, spray, or wipable emulsion product, that does not break down under multiple cycles of heating and cooling, further comprising one or more of preservatives, vitamins, antioxidants, enzymes, colors, and coenzymes.

REMARKS

Applicant has carefully reviewed and considered the Office Action mailed on October 1, 2002, and the references cited therewith.

Claims 1, 4-5 and 7 are amended, and claims 13-19 are added; as a result, claims 1-19 are now pending in this application.

§112 Rejection of the Claims

Claims 1-12 were rejected under 35 USC § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The Examiner is questioning the description of the product "that does not break down under multiple cycles of heating and cooling." Support for this amendment is on page 4, lines 25-29. "Furthermore, the emulsions of the present invention display stability under conditions of repeated heating and cooling cycles."

§103 Rejection of the Claims

Claims 1-12 were rejected under 35 USC § 103(a) as being unpatentable over Esser (6,221,345), Palinczar (4,724,139), and Kasat et al. (5,424,070) essentially for reasons of record stated in the Office Action dated May 21, 2002. The Applicant requests reconsideration of these grounds of rejection and withdrawal of this final rejection because the Examiner does not appear to have considered the products described in claims 6 and 7-12. None of the references cited

describe a formulation having the physical and chemical properties in these claims. The Esser patent describes the “moisturizing cream” as a mixture of cetyl alcohol, cetyl stearyl alcohol, decyl ester of Oleic acid, and glyceryl stearate. These ingredients are not the ingredients in the products of claims 1-13.

The Examiner states that the standard is a consideration of the references as a whole and not one-by-one. However, the standard for combining the references is that something in the references must suggest combination. The Applicant asserts that the references do not suggest combination because the Esser patent describes a creamy, aqueous emulsion. The Kasat reference describes a solid stick. There is no emulsion in the Kasat product.. The Kasat product cannot be formulated to make a spray, wipe or roll on product, such as is claimed. The Kasat formulation is not aqueous. The applicant respectfully requests the Examiner to provide the basis, within the application, for combining the references. The products of Esser and Kasat appear antithetical. What support is there that combining the references cited yields a stable product, when the products in each reference are so different?

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612-373-6976) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

AMIT PATEL ET AL.

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Box AF, Commissioner of Patents, Washington, D.C. 20231, on this 2nd day of January, 2003.

Name

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Signature

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